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SAN FRANCISCO BAYKEEPER

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

SAN FRANCISCO BAYKEEPER, a non-profit corporation,

Plaintiff,

v.

CITY OF BERKELEY and COMMUNITY CONSERVATION CENTERS, INC.,

Defendants.

Civil No.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND CIVIL PENALTIES

(Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*)

Plaintiff San Francisco Baykeeper ("Baykeeper"), by and through its counsel, alleges as follows:

INTRODUCTION

1. This is a citizen suit, brought pursuant to section 505(a)(1) of the Federal Water Pollution Control Act (the "Clean Water Act" or "CWA"), 33 U.S.C. § 1365(a)(1), to address violations of the CWA by the City of Berkeley (the "City") and Community Conservation Centers, Inc. ("CCC") (collectively, "Defendants") arising out of operations at the Berkeley City Transfer Station ("BCTS") and Recycling Center located in Berkeley, California. Since November 6, 2010, Defendants have been discharging and continue to discharge polluted stormwater from the BCTS and Recycling Center, located respectively at 1201 2nd Street and 669 Gilman Street in Berkeley, California (collectively, the "Facility") in violation of the express terms and conditions of Sections 301 and 402 of the Clean Water Act, 33 U.S.C. §§ 1311, 1342. Since November 6, 2010, Defendants have also violated the General Industrial Stormwater Permit issued by the State of California, NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "Industrial Stormwater Permit"). Baykeeper seeks a declaratory judgment, injunctive relief, the imposition of civil penalties, and the award of costs, including attorney and expert witness fees, for Defendants' repeated and ongoing violations of the Clean Water Act.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction over the parties and subject matter of this action pursuant to section 505(a)(1) of the CWA, 33 U.S.C. § 1365(a)(1), 28 U.S.C. § 1331 (an action arising under the laws of the United States), and 28 U.S.C. § 2201 (declaratory relief).

3. On November 6, 2015, Baykeeper provided notice of intent to file suit against Defendants for Defendants' CWA violations ("Notice Letter") to the Administrator of the United States Environmental Protection Agency ("EPA"); the Regional Administrator of EPA Region IX; the Executive Director of the State Water Resources Control Board ("State Board"); the Executive Officer of the Regional Water Quality Control Board, San Francisco Bay Region ("Regional Board")

(collectively, "state and federal agencies"), and Defendants, as required by the CWA, 33 U.S.C. § 1365(b)(1)(A). A copy of the Notice Letter is attached as Exhibit 1.

4. More than sixty (60) days have passed since the Notice Letter was mailed to Defendants and the state and federal agencies. Neither EPA nor the State of California has commenced or is diligently prosecuting a court action to redress the violations alleged in this complaint. No claim in this action is barred by any prior administrative action pursuant to section 309(g) of the CWA, 33 U.S.C. § 1319(g).

5. Venue is proper in the Northern District of California pursuant to section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

INTRADISTRICT ASSIGNMENT

6. Intradistrict assignment of this matter to the Oakland Division of the Court is appropriate pursuant to Civil Local Rule 3-2(c). The events or omissions which give rise to Baykeeper's claims occurred in Alameda County, which is under the jurisdiction of the Oakland Division of the Northern District of California.

PARTIES

7. Plaintiff SAN FRANCISCO BAYKEEPER is a non-profit public benefit corporation organized under the laws of the State of California with its main office in Oakland, California. Baykeeper's 5,000 members live and/or recreate in and around the San Francisco Bay area. Baykeeper is dedicated to protecting the water quality of San Francisco Bay for the benefit of its ecosystems and communities. To further these goals, Baykeeper actively seeks federal and state agency implementation of the CWA, and, where necessary, directly initiates enforcement actions on behalf of itself and its members.

8. Members of Baykeeper, including citizens, taxpayers, property owners, and residents, live, work, and travel near, and recreate in, San Francisco Bay and its tributaries, into which Defendants discharge pollutants. Baykeeper members use and enjoy San Francisco Bay and its tributaries for recreational, educational, scientific, conservation, aesthetic, spiritual, and other purposes. Defendants' discharges of stormwater containing pollutants impair each of these uses.

Thus, the interests of Baykeeper's members have been, are being, and will continue to be adversely affected by Defendants' failure to comply with the CWA and the Industrial Stormwater Permit.

9. Defendant CITY OF BERKELEY is a municipal corporation located in Alameda County, California that owns the properties at 1201 2nd Street and 669 Gilman Street in Berkeley, California, and operates the BCTS. The Recycling Center is operated by Defendant CCC under a contract with the City. The November 10, 1992 "Notice of Intent" for the Facility to comply with the terms of the 1997 Permit, each annual report filed for the Facility since 2010 pursuant to the Industrial Stormwater Permit, and the June 11, 2015 "Notice of Intent" for the Facility to comply with the terms of the 2015 Permit, named the City as the owner and/or operator. Plaintiff is therefore informed and believes and thereon alleges that the City owns and operates the Facility.

10. Defendant COMMUNITY CONSERVATION CENTERS, INC. is an active California corporation located at 1563 Solano Avenue, #106 in Berkeley, California. The Recycling Center is operated by Defendant CCC under a series of contracts with the City, beginning with Contract No. 2705, which began on July 1, 1993 and ended on June 30, 2005, and was extended by Contract No. 6856, which began on July 1, 2005 and ended on June 30, 2007. On May 31, 2007, the City Manager extended Contract No. 6856 to June 30, 2008, again extended the termination date of the contract on June 25, 2008 to July 31, 2008, and further extended the termination date of contract on June 8, 2011 to August 31, 2011. Contract No. R 8781 continued CCC's operation of the Recycling Center, beginning on August 1, 2011 and ending on June 30, 2015. On June 4, 2015, the City Manager extended the termination date of Contract No. R 8781 from June 30, 2015 to June 30, 2016. Contract No. R. 8781 requires CCC to "cooperate with the City in complying with provisions of the City's existing or new Storm water Pollution Prevention Permits or related permits and requirements." Additionally, the City's Storm Water Pollution Prevention Plan for the Facility filed to comply with the terms of the 2015 Permit named "Community Conservation Center" as the operator of the Recycling Center. Plaintiff is therefore informed and believes and thereon alleges that CCC operates the Facility.

REGULATORY BACKGROUND

The Problem of Stormwater Pollution

11. Stormwater runoff is one of the most significant sources of water pollution in the nation and has been recognized as a leading cause of significant and cumulative harmful impacts to the water quality of San Francisco Bay. With every rainfall event, hundreds of millions of gallons of polluted rainwater flow from local industrial facilities, such as the Facility, and pour into storm drains, local tributaries, and the Bay. The consensus among state and federal agencies and water quality specialists is that stormwater pollution accounts for more than half of the total heavy metal pollution entering the San Francisco Bay watershed each year.

12. Stormwater runoff from industrial sites such as the Facility causes harm to humans and aquatic life. In particular, stormwater can contain heavy metal pollutants such as aluminum, chromium, copper, iron, lead, mercury, nickel, tin, and zinc, as well as high concentrations of suspended solids, and nitrate and nitrite. Exposure and ingestion of heavy metals can cause health problems in people and aquatic animals, including neurological, physiological, and reproductive effects. Heavy metals have been shown to alter activity in tissues and blood of fish.

13. High concentrations of total suspended solids ("TSS") degrade optical water quality by reducing water clarity and decreasing light available to support photosynthesis. TSS have been shown to alter predator-prey relationships (for example, turbid water might make it difficult for fish to see their prey). Deposited solids alter habitat for fish, aquatic plants, and benthic organisms. TSS can also be harmful to aquatic life because numerous pollutants, including metals and polycyclic aromatic hydrocarbons ("PAHs"), are adsorbed onto TSS. Thus, higher concentrations of TSS mean higher concentrations of toxins associated with those sediments. Inorganic sediments, including settleable matter and suspended solids, have been shown to negatively impact species richness, diversity, and total biomass of filter feeding aquatic organisms on bottom surfaces.

The Clean Water Act

14. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless the discharge is in compliance with various enumerated CWA sections. Among other things, CWA section 301(a) prohibits discharges not authorized by, or in

violation of, the terms of a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to CWA section 402, 33 U.S.C. § 1342.

15. CWA section 402(b), 33 U.S.C. § 1342(b), allows each state to administer its own EPA-approved permit program for discharges. In California, the State Board and its nine Regional Boards have approval from EPA to administer an NPDES permit program for the State. The State Board and Regional Boards issue individual and general NPDES permits regulating water pollutant discharges from various categories of dischargers.

16. CWA section 402(p), 33 U.S.C. § 1342(p), requires that NPDES permits be issued for stormwater discharges "associated with industrial activity."

17. CWA section 301(b) requires that, by March 31, 1989, all point source dischargers, including those discharging polluted stormwater, must achieve technology-based effluent limitations by utilizing the Best Available Technology Economically Achievable ("BAT") for toxic and nonconventional pollutants and the Best Conventional Pollutant Control Technology ("BCT") for conventional pollutants. *See* 33 U.S.C. § 1311(b); 40 C.F.R. § 125.3(a)(2)(ii)-(iii).

18. CWA section 505(a)(1) provides for citizen enforcement actions against any "person," including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. § 1365(a)(1); *see* 33 U.S.C. § 1362(5).

19. CWA section 505(a) authorizes a citizen suit action for injunctive relief. 33 U.S.C. § 1365(a).

20. CWA violators are subject to an assessment of civil penalties of up to $37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. §§ 19.1-19.4.

State Regulations

21. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water Quality Standards, including water quality objectives and beneficial uses for navigable waters of the United States. The CWA prohibits discharges from causing or contributing to a violation of such state Water Quality Standards. *See* 33 U.S.C. § 1311(b)(1)(c); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

22. The State of California regulates water quality through the State Board and nine Regional Boards, and each Regional Board maintains a separate Water Quality Control Plan which contains Water Quality Standards for water bodies within its geographic area.

23. The San Francisco Bay Regional Water Quality Control Board has adopted the "San Francisco Bay Basin (Region 2) Water Quality Control Plan" ("Basin Plan"), as amended by Resolution No. R2-2010-0100, setting forth the Water Quality Standards and beneficial uses for San Francisco Bay and its tributaries.

24. The Basin Plan sets forth, among other things, narrative Water Quality Standards for floating material, oil and grease, sediment, settleable matter, and suspended materials, and sets forth numeric Water Quality Standards for pH, arsenic, cadmium, chromium VI, copper, cyanide, lead, mercury, nickel, selenium, silver, tributyltin, zinc, and PAHs. *See* Basin Plan §§ 3.3.6, 3.3.7, 3.3.9, 3.3.12-3.3.14, 3.3.21, and Table 3-3. The Basin Plan also includes site specific objectives ("SSOs"), which are Water Quality Standards for specific sites, for certain pollutants of concern, including copper and nickel. *See* Basin Plan Table 3-3A.

25. In addition, EPA has promulgated Water Quality Standards for toxic priority pollutants in all California water bodies (the "California Toxics Rule" or "CTR"), which apply to San Francisco Bay and its tributaries, unless expressly superseded by the Basin Plan. 65 Fed. Reg. 31,682 (May 18, 2000); 40 C.F.R. § 131.38.

The Industrial Stormwater Permit

26. In California, the State Board has elected to issue a single, statewide general permit applicable to all stormwater discharges associated with industrial activity. On April 17, 1997, the State Board adopted the 1997 Permit, which was in effect through June 30, 2015. On July 1, 2015, the 2015 Permit became effective and superseded the 1997 Permit, except for enforcement purposes.

27. To discharge stormwater lawfully in California, industrial dischargers (i.e., facility operators) must secure coverage under the Industrial Stormwater Permit by filing a notice of intent and comply with its terms, or obtain and comply with an individual NPDES permit. 1997 Permit, p. II, VII; 2015 Permit, Section I(A) (Findings 8, 12), Attachment C (defining "discharger").

28. The Industrial Stormwater Permit is an NPDES permit issued pursuant to CWA section 402(p), 33 U.S.C. § 1342(p). Violations of the Industrial Stormwater Permit are also violations of the CWA. 1997 Permit, Section C(1); 2015 Permit, Section XXI(A).

29. The Industrial Stormwater Permit contains certain absolute prohibitions. The Industrial Stormwater Permit prohibits the direct or indirect discharge of materials other than stormwater ("non-stormwater discharges"), which are not otherwise authorized by an NPDES permit, to the waters of the United States. 1997 Permit, Order Part A(1); 2015 Permit, Section III(B). The Industrial Stormwater Permit prohibits stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance (1997 Permit, Order Part A(2); 2015 Permit, Sections III(C), VI(C)) and discharges that adversely impact human health or the environment (1997 Permit, Order Part C(1); 2015 Permit, Section VI(B)). Finally, the Industrial Stormwater Permit prohibits discharges that cause or contribute to an exceedance of any applicable Water Quality Standard contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. 1997 Permit, Order Part C(2); 2015 Permit, Section VI(A).

30. Under the CWA and the Industrial Stormwater Permit, dischargers must employ Best Management Practices ("BMPs") that constitute BAT and BCT to reduce or eliminate stormwater pollution. 33 U.S.C. § 1311(b); 1997 Permit, Order Part B(3); 2015 Permit, Section X(H). EPA has developed benchmark levels ("Benchmarks") that are objective guidelines to evaluate whether a permittee's BMPs achieve compliance with the BAT/BCT standards. Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities ("Multi-Sector Permit"), 80 Fed. Reg. 34,403, 34,405 (June 16, 2015); Multi-Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept. 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

31. The 2015 Permit includes Numeric Action Limits ("NALs") that are based on Benchmarks. 2015 Permit, Section I(M) (Finding 62). Like Benchmarks, the NALs indicate "the overall pollutant control performance at any given facility." *Id.* at Section I(M) (Finding 61).

32. Dischargers must develop and implement a Storm Water Pollution Prevention Plan ("SWPPP") at the time industrial activities begin. 1997 Permit, Section A(1)(a) and Order Part E(2);

2015 Permit, Sections I(I) (Finding 54), X(B). The SWPPP must identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of stormwater and authorized non-stormwater discharges from the facility. 1997 Permit, Section A(2); 2015 Permit, Section X(G). The SWPPP must identify and implement site-specific BMPs to reduce or prevent pollutants associated with industrial activities in stormwater and authorized non-stormwater discharges. 1997 Permit, Section A(2); 2015 Permit, Section X(H). The SWPPP must include BMPs that achieve pollutant discharge reductions attainable via BAT and BCT. 1997 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding 32), V(A).

33. The SWPPP must include: a narrative description and summary of all industrial activity, potential sources of pollutants, and potential pollutants; a site map indicating the stormwater conveyance system, associated points of discharge, direction of flow, areas of actual and potential pollutant contact, including the extent of pollution-generating activities, nearby water bodies, and pollutant control measures; a description of stormwater management practices; a description of the BMPs to be implemented to reduce or prevent pollutants in stormwater discharges and authorized non-stormwater discharges; the identification and elimination of non-stormwater discharges; the location where significant materials are being shipped, stored, received, and handled, as well as the typical quantities of such materials and the frequency with which they are handled; a description of dust and particulate-generating activities; and a description of individuals and their current responsibilities for developing and implementing the SWPPP. 1997 Permit, Sections A(1)-(10); 2015 Permit, Section X.

34. The Industrial Stormwater Permit also requires facility operators to properly operate and maintain any facilities and systems of treatment and control installed or used to achieve compliance with the conditions of the Industrial Stormwater Permit and requirements of the SWPPP at all times. 1997 Permit, Section C(5); 2015 Permit, Section XXI(F).

35. The SWPPP and site maps must be assessed annually and revised as necessary to ensure accuracy and effectiveness. 1997 Permit, Sections A(1), B(3)-(4); 2015 Permit, Sections I(J) (Finding 55), X(B)(1).

36. The 1997 Permit required facility operators to develop and implement a monitoring and reporting program ("MRP") when industrial activities begin at a facility. 1997 Permit, Section B(1)-

(2) and Order Part E(3). The MRP must have ensured that stormwater discharges were in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the 1997 Permit. *Id.* at Section B(2) and B(10). The MRP must have ensured that practices at the facility to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges were evaluated and revised to meet changing conditions at the facility, including revision of the SWPPP. *Id.*

37. The 2015 Permit requires facility operators to monitor and sample stormwater discharges to ensure that the facility is complying with the terms of the permit. 2015 Permit, Sections I(J) (Findings 55-56); XI.

38. Pursuant to the monitoring and reporting requirements of the Industrial Stormwater Permit, facility operators must conduct ongoing visual observations of stormwater and non-stormwater discharges and record responsive measures taken to eliminate unauthorized non-stormwater discharges and to reduce or prevent pollutants in stormwater and authorized non-stormwater discharges. 1997 Permit, Sections B(3)-(4); 2015 Permit, Section XI(A). Facility operators must collect samples of stormwater discharges from all locations where stormwater may be discharged from the facility. 1997 Permit, Sections B(5), (7); 2015 Permit, Section XI(B)(4)-(5). Through the 2014-2015 reporting period, facility operators were required to analyze stormwater samples for pH, total suspended solids, total organic carbon (or oil and grease as a substitute), specific conductance, toxic chemicals, and other pollutants which are likely to be present in significant quantities in stormwater discharging from the facility. 1997 Permit, Section B(5). Additionally, the Industrial Stormwater Permit requires operators of facilities that fall under Standard Industrial Classification ("SIC") code 5093 to analyze stormwater samples for the following additional parameters: iron, lead, aluminum, zinc, and chemical oxygen demand. 1997 Permit, Table D; 2015 Permit, Table 1.

STATEMENT OF FACTS

Facility Background

39. Defendants operate the Facility located at 1201 2nd Street and 669 Gilman Street, Berkeley, California 94710.

40. The Facility is regulated by the Industrial Stormwater Permit.

41. The City submitted a Notice of Intent to comply with the 1997 Permit to the State Board on or around November 10, 1992.

42. The City submitted a Notice of Intent to comply with the 2015 Permit to the State Board on or around June 11, 2015.

43. Operations at the Facility generally include, but are not limited to, processing municipal, commercial, and private solid waste to be transferred to a sanitary landfill; processing green waste for composting; and processing recyclables (i.e., plastic, glass, metal, and paper) collected by residential curbside, commercial pick-up, buyback, and drop-off recycling programs. The Facility is categorized under SIC Codes 4212, local trucking without storage; and 5093, scrap and waste materials (not including source-separated recycling). Facilities that fall under SIC Code 5093 are required to analyze stormwater samples for the following parameters: iron, lead, aluminum, zinc, and chemical oxygen demand ("COD").

44. Some operations at the Facility occur outdoors and are causing pollutants to be exposed to rainfall.

45. The types of pollutants that the Facility releases into the immediate environment are known to include, or have the potential to include, among other contaminants: sediment (total suspended solids or "TSS"); heavy metals, such as iron, copper, zinc, lead, and aluminum; pH, COD, oil and grease, antifreeze, fuel, battery acid, and other pollutants.

46. The industrial materials stored and the pollutants generated at the Facility are exposed to stormwater flows.

47. Activities at the Facility generate significant debris and particulate matter, which contain pollutants and settle on surfaces within the Facility. During rain events, this pollution washes off of those surfaces and into stormwater discharge points, which flow to San Francisco Bay.

Activities Contributing to CWA Violations

48. Defendants have not developed and/or implemented an adequate SWPPP at the Facility.

49. Defendants have not developed and/or implemented BMPs that adequately minimize the exposure of pollutants to stormwater at the Facility.

50. Defendants have not developed and/or implemented BMPs at the Facility that adequately control and minimize polluted runoff from the Facility.

51. Defendants have not developed and/or implemented BMPs at the Facility that adequately treat and remove pollutants in stormwater prior to discharge.

52. Defendants have not developed and/or implemented adequate measures to reduce or eliminate stormwater pollution that constitute BAT/BCT.

53. Defendants have not developed and/or implemented adequate BMPs at the Facility to achieve stormwater discharges that meet EPA Benchmarks, NALs, and/or applicable Water Quality Standards.

54. Defendants have not adequately evaluated and revised the Facility's SWPPP to address these failures.

55. Defendants have failed to properly operate and maintain the structures and systems that have been put in place at the Facility to achieve compliance with the Industrial Stormwater Permit and its SWPPP requirements.

56. Defendants have not developed and/or implemented an adequate monitoring and reporting program at the Facility.

57. Defendants have failed to consistently analyze their stormwater samples for aluminum.

58. Defendants' monitoring and reporting activities have not resulted in practices that adequately reduce or prevent pollutants from discharging from the stormwater flows from the Facility.

59. Defendants' monitoring activities have not effectively identified compliance problems at the Facility or resulted in effective revisions of the SWPPP.

60. Due to Defendants' lack of effective pollution prevention measures, including effective BMPs, and their failure to implement an effective monitoring and reporting program, stormwater from the Facility becomes polluted with many constituents. The potential pollutants include: TSS, iron, copper, zinc, lead, aluminum, pH, COD, oil and grease, antifreeze, fuel, battery acid, and other pollutants. Pollutants become entrained in stormwater when such water flows over and across the outdoor areas of the Facility.

61. Polluted stormwater is discharged from the Facility into San Francisco Bay, via the

City of Berkeley's storm drain system, which drains to San Francisco Bay via the Gilman Street outfall. San Francisco Bay and its tributaries are waters of the United States.

62. Defendants' annual stormwater sampling results indicate that the Facility's discharges of stormwater are consistently contaminated with higher levels of pollutants than are permissible under the Industrial Stormwater Permit.

63. Defendants' annual stormwater sampling results indicate that the Facility's discharges of stormwater are regularly contaminated with higher levels of pollutants than are consistent with BMPs that constitute BAT/BCT.

64. Defendants' repeated stormwater exceedances of EPA Benchmarks over the past five years for pollutants, including TSS, COD, oil and grease, pH, copper, aluminum, zinc, lead, and iron, indicate that Defendants have failed and continue to fail to meet BAT/BCT.

CLAIMS

FIRST CLAIM FOR RELIEF

Discharges in Violation of Permit Prohibitions of the Industrial Stormwater Permit

(Violations of 33 U.S.C. §§ 1311, 1342)

65. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

66. The Industrial Stormwater Permit requires that stormwater discharges and authorized non-stormwater discharges shall not cause or threaten to cause pollution, contamination, or nuisance. *See* 1997 Permit, Order Part A(2); 2015 Permit, Sections III(C), VI(C). Receiving Water Limitations of the Industrial Stormwater Permit require that stormwater discharges and authorized non-stormwater discharges shall not adversely impact human health or the environment. *See* 1997 Permit, Order Part C(1); 2015 Permit, Section VI(B). Finally, the Industrial Storwmater Permit prohibits discharges that cause or contribute to a violation of any water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. 1997 Permit, Order Part C(2); 2015 Permit, Section VI(A).

67. Since at least November 6, 2010, Defendants have been discharging polluted stormwater from the Facility in violation of the prohibitions of the Industrial Stormwater Permit

during every significant rain event (defined by EPA as a rainfall event generating 0.1 inches or more of rain). *See* Exhibit 1, Notice Letter at Attachment 2.

68. The polluted stormwater discharged from the Facility during every significant rain event contains pollutants harmful to fish, plants, birds, and human health that have adversely affected, and continue to adversely affect, human health and the environment in violation of Receiving Water Limitation C(1) of the 1997 Permit and Section VI(B) of the 2015 Permit.

69. Discharges of polluted stormwater from the Facility have in the past caused, and will continue to cause, pollution, contamination, and/or nuisance to the waters of the United States in violation of Discharge Prohibition A(2) of the 1997 Permit, Sections III(C) and VI(C) of the 2015 Permit.

70. Discharges of polluted stormwater from the Facility have in the past caused, and will continue to cause or contribute to violations of the Water Quality Standards set forth in the Basin Plan in violation of Order Part C(2) of the 1997 Permit and Section VI(A) of the 2015 Permit.

71. Each day since at least November 6, 2010 that Defendants have discharged polluted stormwater from the Facility in violation of the Industrial Stormwater Permit is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

72. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

73. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

74. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

SECOND CLAIM FOR RELIEF

Discharge in Violation of Effluent Limitations of the Industrial Stormwater Permit

(Violations of 33 U.S.C. §§ 1311, 1342)

75. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

76. The Industrial Stormwater Permit's SWPPP requirements and effluent limitations require dischargers to reduce or prevent pollutants in their stormwater discharges through the implementation of measures that must achieve BAT for toxic and nonconventional pollutants and BCT for conventional pollutants.

77. Defendants have discharged and continue to discharge stormwater from the Facility containing levels of pollutants that do not achieve compliance with the BAT/BCT requirements during every significant rain event occurring from November 6, 2010 through the present. Defendants' failure to develop and/or implement BMPs adequate to achieve the pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of the Industrial Stormwater Permit and the CWA. *See* 1997 Permit, Order Part B(3); 2015 Permit, Sections I(D) (Finding 32), V(A); 33 U.S.C. § 1311(b).

78. Each day since at least November 6, 2010 that Defendants have discharged stormwater containing pollutants in violation of the Industrial Stormwater Permit, specifically Effluent Limitation B(3) of the 1997 Permit, is a separate and distinct violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

79. Defendants' CWA violations described in the paragraphs above will continue in the future, as violations of Sections I(D) and V(A) of the 2015 Permit, until Defendants develop and implement BMPs at the Facility adequate to achieve pollutant discharge reductions attainable via BAT and BCT.

80. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365.

81. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. §

1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

82. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

THIRD CLAIM FOR RELIEF

Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan, in Violation of the Industrial Stormwater Permit

(Violations of 33 U.S.C. §§ 1311, 1342)

83. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

84. The Industrial Stormwater Permit requires dischargers of stormwater associated with industrial activity to develop and implement an adequate SWPPP when they commence industrial activity. 1997 Permit, Section A(1); 2015 Permit, Section X(B).

85. Defendants, as of November 6, 2010, have commenced industrial activity and continue to conduct industrial activity at the Facility.

86. Defendants have failed and continue to fail to develop and implement an adequate SWPPP or implement all necessary revisions to the SWPPP for the Facility as required by the Industrial Stormwater Permit.

87. Defendants have failed and continue to fail to develop or implement a SWPPP for the Facility that includes BMPs adequate to meet the requirements of the Industrial Stormwater Permit, specifically, Section A of the 1997 Permit and Section X of the 2015 Permit.

88. Defendants have failed and continue to fail to adequately develop or implement a SWPPP at the Facility that prevents discharges from violating the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit.

89. Each day since November 6, 2010 that Defendants have failed to adequately develop and/or implement a SWPPP for the Facility in violation of the Industrial Stormwater Permit is a separate and distinct violation of CWA section 301(a), 33 U.S.C. § 1311(a).

90. Defendants have been in violation of the Industrial Stormwater Permit's SWPPP requirements every day since November 6, 2010. Defendants will continue to be in violation of the SWPPP requirements each day that Defendants fail to develop and fully implement an adequate SWPPP for the Facility.

91. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties pursuant to CWA sections 309(d) and 505, 33 U.S.C. §§ 1319(d) and 1365.

92. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

93. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

FOURTH CLAIM FOR RELIEF

Failure to Develop and Implement an Adequate Monitoring and Reporting Program, in Violation of the Industrial Stormwater Permit

(Violations of 33 U.S.C. §§ 1311, 1342)

94. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

95. Section B and Order Part E(3) of the 1997 Permit require dischargers of stormwater associated with industrial activity to develop and implement a monitoring and reporting program (including, among other things, sampling and analysis of discharges) no later than August 1, 1997.

96. The 2015 Permit requires facility operators to monitor and sample stormwater discharges to ensure that the facility is complying with the terms of the permit. 2015 Permit, Sections I(J) (Findings 55-56); XI.

97. Defendants have failed and continue to fail to develop and implement an adequate monitoring and reporting program or to implement all necessary revisions to the monitoring and reporting program at the Facility as required by the Industrial Stormwater Permit.

98. Defendants' monitoring and reporting program has failed and continues to fail to ensure that discharges from the Facility are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations as required in Sections B(2) and (10) of the 1997 Permit.

99. Defendants have failed and continue to fail to effectively identify compliance problems at the Facility or to effectively revise the SWPPP to address such pollution problems as required by Sections B(2)-(4) of the 1997 Permit and Section XI(A) of the 2015 Permit.

100. Each day since November 6, 2010 that Defendants have failed to develop and implement an adequate monitoring and reporting program for the Facility in violation of the Industrial Stormwater Permit is a separate and distinct violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

101. Defendants have been in violation of the monitoring and reporting requirements every day since November 6, 2010. Defendants will continue to be in violation of the monitoring and reporting requirements each day that Defendants fail to develop and fully implement an adequate monitoring and reporting program for the Facility.

102. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365.

103. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

104. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

FIFTH CLAIM FOR RELIEF

Unpermitted Discharge of Pollutants in Violation of CWA Section 301(a)

(Violations of 33 U.S.C. § 1311)

105. Plaintiff incorporates the allegations contained in all other paragraphs as though fully set forth herein.

106. Defendants have discharged and continue to discharge pollutants from the Facility absent compliance with the Industrial Stormwater Permit. Thus, Defendants' discharges constitute an unpermitted discharge of pollutants from the Facility to waters of the United States in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

107. Defendants have been in violation of CWA section 301(a) every day it has discharged stormwater from the Facility to waters of the United States since November 6, 2010. Defendants will continue to be in violation of the CWA each day that they have unpermitted stormwater discharges from the Facility to waters of the United States.

108. By committing the acts and omissions alleged above, Defendants are subject to an assessment of civil penalties pursuant to sections 309(d) and 505 of the CWA, 33 U.S.C. §§ 1319(d) and 1365.

109. An action for injunctive relief is authorized by CWA section 505(a), 33 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above will irreparably harm Plaintiff and Plaintiff's members, for which harm they have no plain, speedy, or adequate remedy at law.

110. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because an actual controversy exists as to the rights and other legal relations of the Parties.

RELIEF REQUESTED

Baykeeper respectfully requests this Court to grant the following relief:

1. Declare Defendants to have violated and to be in violation of sections 301(a) and (b) of the Clean Water Act, 33 U.S.C. §§ 1311(a) and (b), for discharging pollutants from the Facility in violation of a permit issued pursuant to section 402(p) of the CWA, 33 U.S.C. § 1342(p), for failing to meet effluent limitations which include the Best Available Technology Economically Achievable and Best Conventional Pollutant Control Technology requirements, and for failing to comply with the substantive and procedural requirements of the Industrial Stormwater Permit;

2. Enjoin Defendants from discharging pollutants from the Facility to stormwater discharge points, which discharge to San Francisco Bay;

3. Order Defendants to restore all receiving waters damaged by Defendants' illegal

discharges of pollutants from the Facility;

4. Enjoin Defendants from violating sections 301(a) and (b) and section 402(p) of the Clean Water Act and from violating the substantive and procedural requirements of the Industrial Stormwater Permit at the Facility;

5. Order Defendants to pay civil penalties of up to $37,500 per day for all violations occurring after January 12, 2009 in accordance with CWA section 309(d), 33 U.S.C. § 1319(d) and 40 C.F.R. §§ 19.1-19.4;

6. Award Plaintiff its costs (including reasonable attorney, witness, and consultant fees) as authorized by the CWA section 505(d), 33 U.S.C. § 1365(d);

7. Award such other relief as this Court may deem appropriate.

Dated: April 20, 2016

Respectfully Submitted,

/s/ Nicole C. Sasaki

Nicole C. Sasaki
Attorneys for Plaintiff
SAN FRANCISCO BAYKEEPER

Exhibit 1

SAN FRANCISCO
BAYKEEPER.

November 6, 2015

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Berkeley City Transfer Station
Attention: Manuel Hector
1201 2nd Street
Berkeley, California 94710

City Clerk
Agent for Service of Process
City of Berkeley
2180 Milvia Street, 1st Floor
Berkeley, California 94704

Community Conservation Centers, Inc.
1563 Solano Avenue, #106
Berkeley, California 94707

Lisa Leland
Agent for Service of Process for
Community Conservation Centers, Inc.
199 Fremont Street, 21st Floor
San Francisco, California 94105

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

Dear Sir or Madam:

I am writing on behalf of San Francisco Baykeeper ("Baykeeper") to give notice that Baykeeper intends to file a civil action against the City of Berkeley and Community Conservation Centers, Inc. (collectively, the "City") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at the Berkeley City Transfer Station ("BCTS") and Recycling Center ("RC"), located respectively at 1201 2nd Street and 669 Gilman Street in Berkeley, California (the "Facility").

Baykeeper is a non-profit public benefit corporation organized under the laws of California, with its office in Oakland, California. Baykeeper's purpose is to protect and enhance the water quality and natural resources of San Francisco Bay, its tributaries, and other waters in the Bay Area, for the benefit of its ecosystems and communities. Baykeeper has over three thousand members who use and enjoy San Francisco Bay and other waters for various recreational, educational, and spiritual purposes. Baykeeper's members' use and enjoyment of these waters are negatively affected by the pollution caused by the City's operations.

This letter addresses the City's unlawful discharge of pollutants from the Facility via stormwater into San Francisco Bay. Specifically, Baykeeper's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Stormwater Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by

Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "Industrial Stormwater Permit").[1]

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to the City of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and Intent to File Suit, Baykeeper intends to file suit in federal court against the City under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Baykeeper is willing to discuss effective remedies for the violations noticed in this letter. We suggest that the City contact us within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The City's Facility consists of two adjacent operations. The City owns and operates BCTS, located at 1201 2nd Street in Berkeley, California. BCTS accepts municipal, commercial, and private solid waste, to be transferred to a sanitary landfill, and also accepts green waste for composting. The City owns RC, a materials recycling facility located at 669 Gilman Street in Berkeley, California. RC is operated by Community Conservation Centers, Inc. RC processes all recyclables collected by residential curbside, commercial pick-up, buyback, and drop-off recycling programs. Potential pollutants from the Facility include pH, total suspended solids ("TSS"), chemical oxygen demand, oil and grease, heavy metals, antifreeze, fuel, battery acid, and other pollutants. Stormwater from the Facility discharges to the City's storm drain system, which discharges to San Francisco Bay via the Gilman Street outfall.

B. The Affected Water

San Francisco Bay is a water of the United States. The CWA requires that water bodies such as San Francisco Bay meet water quality objectives that protect specific "beneficial uses." The beneficial uses of San Francisco Bay and its tributaries include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation

[1] On April 1, 2014, the State Water Resources Control Board adopted 2015 Permit. As of July 1, 2015, the 2015 Permit superseded the 1997 Permit except for the purpose of enforcing violations of the 1997 Permit. 2015 Permit, Section I.A. (Finding 6).

of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the San Francisco Bay watershed and threatens the beneficial uses and ecosystem of this watershed, which includes habitat for threatened and endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as San Francisco Bay and its tributaries, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

On or around November 10, 1992, the City submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the 1997 Permit. On or around June 11, 2015, the City submitted an NOI to be authorized to discharge stormwater from the Facility under the 2015 Permit. However, information available to Baykeeper indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants[2] and best conventional pollutant control technology ("BCT") for conventional pollutants.[3] 1997 Permit, Order Part B.3.; 2015 Permit, Section X.H. EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.[4] The 2015 Permit incorporates these Benchmark values as "Numeric Action Levels." 2015 Permit, Section I.M. (Finding 62).

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[2] BAT is defined at 40 C.F.R. § 442.23. Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

[3] BCT is defined at 40 C.F.R. § 442.22. Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

[4] The Benchmark values are part of EPA's Multi-Sector General Permit ("MSGP") and can be found at: http://water.epa.gov/polwaste/npdes/stormwater/EPA-Multi-Sector-General-Permit-MSGP.cfm. The most recent sector-specific Benchmarks can be found at: http://water.epa.gov/polwaste/npdes/stormwater/upload/msgp2015_part8.pdf ("2015 MSGP"). SIC Code 5093 is covered under Sector N in the 2015 MSGP.

The City's self-reported exceedances of Benchmark values over the last five (5) years, identified in Attachment 2 to this letter, indicate that the City has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit. Baykeeper alleges and notifies the City that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values for TSS, oil and grease, chemical oxygen demand, pH, aluminum, copper, iron, lead, and zinc.

The City's ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that the City has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors, capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce the build-up of pollutants on-site, installing filters in downspouts and storm drains, and other similar measures.

The City's failure to develop and/or implement adequate pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day the City discharges stormwater without meeting BAT/BCT. Baykeeper alleges that the City has discharged stormwater containing excessive levels of pollutants from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years.[5] Attachment 3 compiles all dates in the last five (5) years when a significant rain event occurred. The City is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past five (5) years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. *See* 1997 Permit, Order Part A.2.; 2015 Permit, Sections III.C., VI.C. The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. 1997 Permit, Order Part C.1.; 2015 Permit, Section VI.B. Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS"). 1997 Permit, Order Part C.2.; 2015 Permit, Section VI.A. Applicable WQS are set forth in the California Toxics Rule ("CTR")[6] and Chapter 3 of the San Francisco Bay Basin (Region 2) Water Quality Control Plan ("Basin Plan").[7]

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[5] Significant local rain events are reflected in the rain gauge data available at: http://www.ncdc.noaa.gov/cdo-web/search.

[6] The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31,682 (May 18, 2000).

[7] The Basin Plan is published by the San Francisco Bay Regional Water Quality Control Board at: http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml#2004basinplan.

See Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for San Francisco Bay and its tributaries, including but not limited to the following:

- Waters shall not contain substances in concentrations that result in the deposition of material that cause nuisance or adversely affect beneficial uses.
- Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases from normal background light penetration or turbidity relatable to waste discharge shall not be greater than 10 percent in areas where natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are lethal to or that produce other detrimental responses in aquatic organisms.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use. The Basin Plan, Table 3-3, identifies specific marine water quality objectives for toxic pollutants.[8]

Baykeeper alleges that the City's stormwater discharges have caused or contributed to exceedances of the Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on the City's self-reported data submitted to the San Francisco Bay Regional Water Quality Control Board. The sampling results indicate that the City's discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impact human health or the environment; and violate applicable WQS. For example, the City's sampling results indicate exceedances of numeric WQS for pH, copper, lead, and zinc. *See* Attachment 2.

Baykeeper alleges that each day that the City has discharged stormwater from the Facility, the City's stormwater has contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in San Francisco Bay. Baykeeper alleges that the City has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to San Francisco Bay during at least every significant local rain event over 0.1 inches in the last five (5) years. *See* Attachment 3.

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[8] Basin Plan, Table 3-3 is available at: http://www.waterboards.ca.gov/rwqcb2/water_issues/programs/planningtmdls/basinplan/web/tab/tab_3-03.pdf.

Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or causes or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA. The City is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within the last five (5) years.

C. Failure to Develop and Implement an Adequate Storm Water Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). 1997 Permit, Section A.1.a. and Order Part E.2.; 2015 Permit, Sections I.I. (Finding 54), X.B. The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. 1997 Permit, Order Part E.2.; 2015 Permit, Section X.B.

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all potential pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, and specifications of BMPs designed to reduce pollutant discharge to BAT and BCT levels. 1997 Permit, Sections A.1-A.10.; 2015 Permit, Section X. Moreover, the Industrial Stormwater Permit requires dischargers to evaluate and revise SWPPPs to ensure they meet these minimum requirements, in particular that the necessary BMPs are in place and being implemented. *See* 1997 Permit, Section A.9. (requiring a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP implemented within 90 days after the evaluation); 2015 Permit, Section X.D.2.a. (obligating the discharger to "ensure its SWPPP is developed, implemented and revised as necessary to be consistent with any applicable municipal, state, and federal requirements that pertain to the requirements in [the 2015 Permit]."). Additionally, the Industrial Stormwater Permit requires that the City assess its stormwater sampling data and identify any additional parameters, beyond those explicitly required, that indicate the presence of pollutants in industrial stormwater. *See* 1997 Permit, Section Section B.5.c.ii.; 2015 Permit, Section X.G.2.d.

Based on information available to Baykeeper, the City has failed to prepare and/or implement an adequate SWPPP and/or to revise the SWPPP to satisfy each of the requirements of the Industrial Stormwater Permit. For example, the City's past or current SWPPP has not/does not include and/or the City has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with the Industrial Stormwater Permit, as evidenced by the data in Attachment 2. Over the past five (5) years, the City's stormwater sampling data has consistently indicated that the City needs to implement BMPs to control for copper in its stormwater discharges. However, the City's 2015 SWPPP fails to list copper as a parameter to be analyzed.

Accordingly, the City has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of the Industrial Stormwater Permit, and the City will continue to be in violation every day until

it develops and implements an adequate SWPPP. The City is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past five (5) years.

D. Failure to Properly Sample Stormwater Discharges

The City is also in violation of the Industrial Stormwater Permit because it has been collecting stormwater samples that do not adequately reflect pollution coming from its industrial activities. Section B.7.a. of the 1997 Permit required the City to "collect samples of stormwater discharges from all drainage areas that represent the quality and quantity of the facility's storm water discharges." Section B.5.c.ii. of the 1997 Permit required facilities to sample for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities." Section B.5.c.iii. of the 1997 Permit and Section XI.B.6. of the 2015 Permit require facilities to sample for specific analytical parameters based on their standard industrial classification ("SIC") code. For facilities that fall into SIC Code 5093, scrap and waste materials, these parameters are iron, lead, aluminum, zinc, and chemical oxygen demand. The City self-classified the Facility under SIC code 5093, but has failed to consistently test its samples for these parameters and thus has failed to comply with Sections B.5.c. and B.7.a. of the 1997 Permit and Section XI.B.6. of the 2015 Permit.

As a result of the City's failure to properly sample stormwater discharges from its Facility, the City has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the past five (5) years. These violations are ongoing. The City will continue to be in violation of the sampling requirements each day that the City fails to adequately develop and/or implement an effective sampling program at the Facility. The City is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last five (5) years.

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES permit issued pursuant to section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. The City sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." 1997 Permit, Order Part A.1.; *see also* 2015 Permit, Sections I.A. (Finding 8) and I.C. (Finding 28).

Because the City has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a).

IV. PERSONS RESPONSIBLE FOR THE VIOLATIONS.

The City of Berkeley and Community Conservation Centers, Inc. are the persons responsible for the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

VI. COUNSEL

Baykeeper is represented by the following counsel in this matter, to whom all communications should be directed:

Nicole C. Sasaki, Associate Attorney
George Torgun, Managing Attorney
San Francisco Baykeeper
1736 Franklin Street, Suite 800
Oakland, CA 94612
(510) 735-9700

Nicole C. Sasaki: (510) 735-9700 x110, nicole@baykeeper.org
George Torgun: (510) 735-9700 x105, george@baykeeper.org

VII. REMEDIES.

Baykeeper intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against the City for the above-referenced violations. Baykeeper will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Baykeeper will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against the City in this action. The CWA imposes civil penalty liability of up to $37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Baykeeper will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, Baykeeper is willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me or George Torgun to initiate these discussions.

Sincerely,

Nicole Sasaki

Nicole C. Sasaki
Associate Attorney
San Francisco Baykeeper

Cc:

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Jared Blumenfeld, Regional Administrator
U.S. EPA, Region 9
75 Hawthorne Street
San Francisco, CA 94105

Bruce Wolfe, Executive Officer
Regional Water Quality Control Board
San Francisco Bay Region
1515 Clay Street, Suite 1400
Oakland, CA 94612

Thomas Howard, Executive Director
State Water Resources Control Board
1001 I Street
Sacramento, CA 95814

Attachment 1: EPA Benchmarks and Water Quality Standards for Discharges to Saltwater

A. EPA Benchmarks, 2000 and 2015 Multi-Sector General Permit ("MSGP")

Parameter	Units	Benchmark value	Source
pH	SU	6.0 – 9.0	2015 MSGP
Total Suspended Solids	mg/L	100	2015 MSGP
Chemical Oxygen Demand	mg/L	120	2015 MSGP
Oil and Grease	mg/L	15	2000 MSGP
Aluminum Total	mg/L	0.75	2015 MSGP
Copper Total	mg/L	0.0048	2015 MSGP
Iron Total	mg/L	1.0	2015 MSGP
Lead Total	mg/L	0.21	2015 MSGP
Zinc Total	mg/L	0.09	2015 MSGP

B. Water Quality Standards (Basin Plan, Tables 3-3, 3-3A)

Parameter	Units	WQS value	Source
pH	SU	6.5 – 8.5	Basin Plan
Copper	mg/L	0.0094	Basin Plan
Lead	mg/L	0.21	Basin Plan
Zinc	mg/L	0.09	Basin Plan

Attachment 2: Table of Exceedances for Berkeley City Transfer Station and Recycling Center

Table containing each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of Basin Plan Water Quality Standards. The EPA Benchmarks and Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past five (5) years.

Reporting Period	Sample Location	Sample Date	Parameter	Result	Unit
2010-2011	DP-1	12/8/2010	Chemical Oxygen Demand	880	mg/L
2010-2011	DP-2	12/8/2010	Chemical Oxygen Demand	230	mg/L
2010-2011	DP-3	12/8/2010	Chemical Oxygen Demand	290	mg/L
2010-2011	DP-4	12/8/2010	Chemical Oxygen Demand	430	mg/L
2010-2011	DP-1	12/8/2010	Copper Total	0.19	mg/L
2010-2011	DP-2	12/8/2010	Copper Total	0.088	mg/L
2010-2011	DP-3	12/8/2010	Copper Total	0.047	mg/L
2010-2011	DP-4	12/8/2010	Copper Total	0.21	mg/L
2010-2011	DP-1	12/8/2010	Lead Total	0.34	mg/L
2010-2011	DP-3	12/8/2010	Lead Total	0.27	mg/L
2010-2011	DP-1	12/8/2010	Oil and Grease	66	mg/L
2010-2011	DP-2	12/8/2010	Oil and Grease	20	mg/L
2010-2011	DP-3	12/8/2010	Oil and Grease	29	mg/L
2010-2011	DP-4	12/8/2010	Oil and Grease	44	mg/L
2010-2011	DP-1	12/8/2010	Total Suspended Solids	900	mg/L
2010-2011	DP-2	12/8/2010	Total Suspended Solids	278	mg/L
2010-2011	DP-3	12/8/2010	Total Suspended Solids	328	mg/L
2010-2011	DP-4	12/8/2010	Total Suspended Solids	830	mg/L
2010-2011	DP-1	12/8/2010	Zinc Total	2.9	mg/L
2010-2011	DP-2	12/8/2010	Zinc Total	0.82	mg/L
2010-2011	DP-3	12/8/2010	Zinc Total	0.58	mg/L
2010-2011	DP-4	12/8/2010	Zinc Total	1.2	mg/L
2010-2011	DP-1	5/25/2011	Chemical Oxygen Demand	1700	mg/L
2010-2011	DP-2	5/25/2011	Chemical Oxygen Demand	360	mg/L
2010-2011	DP-3	5/25/2011	Chemical Oxygen Demand	330	mg/L
2010-2011	DP-4	5/25/2011	Chemical Oxygen Demand	220	mg/L
2010-2011	DP-1	5/25/2011	Copper Total	0.68	mg/L
2010-2011	DP-2	5/25/2011	Copper Total	0.076	mg/L
2010-2011	DP-3	5/25/2011	Copper Total	0.061	mg/L
2010-2011	DP-4	5/25/2011	Copper Total	0.042	mg/L
2010-2011	DP-1	5/25/2011	Lead Total	1	mg/L
2010-2011	DP-1	5/25/2011	Oil and Grease	18	mg/L
2010-2011	DP-1	5/25/2011	Total Suspended Solids	1920	mg/L
2010-2011	DP-2	5/25/2011	Total Suspended Solids	372	mg/L
2010-2011	DP-4	5/25/2011	Total Suspended Solids	130	mg/L
2010-2011	DP-1	5/25/2011	Zinc Total	9	mg/L
2010-2011	DP-2	5/25/2011	Zinc Total	0.68	mg/L

2010-2011	DP-3	5/25/2011	Zinc Total	0.85	mg/L
2010-2011	DP-4	5/25/2011	Zinc Total	0.41	mg/L
2011-2012	DP-1	10/6/2011	Aluminum Total	2.2	mg/L
2011-2012	DP-2	10/6/2011	Aluminum Total	0.8	mg/L
2011-2012	DP-3	10/6/2011	Aluminum Total	1.4	mg/L
2011-2012	DP-4	10/6/2011	Aluminum Total	0.97	mg/L
2011-2012	DP-1	10/6/2011	Chemical Oxygen Demand	340	mg/L
2011-2012	DP-2	10/6/2011	Chemical Oxygen Demand	170	mg/L
2011-2012	DP-3	10/6/2011	Chemical Oxygen Demand	330	mg/L
2011-2012	DP-4	10/6/2011	Chemical Oxygen Demand	310	mg/L
2011-2012	DP-1	10/6/2011	Copper Total	0.045	mg/L
2011-2012	DP-2	10/6/2011	Copper Total	0.027	mg/L
2011-2012	DP-3	10/6/2011	Copper Total	0.11	mg/L
2011-2012	DP-4	10/6/2011	Copper Total	0.043	mg/L
2011-2012	DP-1	10/6/2011	Iron Total	2.8	mg/L
2011-2012	DP-2	10/6/2011	Iron Total	1.4	mg/L
2011-2012	DP-3	10/6/2011	Iron Total	2.4	mg/L
2011-2012	DP-4	10/6/2011	Iron Total	2.5	mg/L
2011-2012	DP-3	10/6/2011	Oil and Grease	36.9	mg/L
2011-2012	DP-4	10/6/2011	Oil and Grease	19	mg/L
2011-2012	DP-1	10/6/2011	pH	6.4	SU
2011-2012	DP-3	10/6/2011	pH	5.8	SU
2011-2012	DP-4	10/6/2011	pH	5.9	SU
2011-2012	DP-1	10/6/2011	Total Suspended Solids	120	mg/L
2011-2012	DP-2	10/6/2011	Total Suspended Solids	470	mg/L
2011-2012	DP-3	10/6/2011	Total Suspended Solids	310	mg/L
2011-2012	DP-4	10/6/2011	Total Suspended Solids	210	mg/L
2011-2012	DP-1	10/6/2011	Zinc Total	0.26	mg/L
2011-2012	DP-2	10/6/2011	Zinc Total	0.41	mg/L
2011-2012	DP-3	10/6/2011	Zinc Total	0.92	mg/L
2011-2012	DP-4	10/6/2011	Zinc Total	0.43	mg/L
2011-2012	DP-1	3/13/2012	Aluminum Total	2.7	mg/L
2011-2012	DP-2	3/13/2012	Aluminum Total	0.77	mg/L
2011-2012	DP-3	3/13/2012	Aluminum Total	0.97	mg/L
2011-2012	DP-4	3/13/2012	Aluminum Total	1.0	mg/L
2011-2012	DP-1	3/13/2012	Chemical Oxygen Demand	410	mg/L
2011-2012	DP-3	3/13/2012	Chemical Oxygen Demand	220	mg/L
2011-2012	DP-4	3/13/2012	Chemical Oxygen Demand	210	mg/L
2011-2012	DP-1	3/13/2012	Copper Total	0.061	mg/L
2011-2012	DP-2	3/13/2012	Copper Total	0.021	mg/L
2011-2012	DP-3	3/13/2012	Copper Total	0.025	mg/L
2011-2012	DP-4	3/13/2012	Copper Total	0.035	mg/L
2011-2012	DP-1	3/13/2012	Iron Total	4.1	mg/L
2011-2012	DP-2	3/13/2012	Iron Total	1.3	mg/L
2011-2012	DP-3	3/13/2012	Iron Total	1.9	mg/L
2011-2012	DP-4	3/13/2012	Iron Total	2.4	mg/L
2011-2012	DP-1	3/13/2012	Oil and Grease	16.2	mg/L

2011-2012	DP-3	3/13/2012	Oil and Grease	17.7	mg/L
2011-2012	DP-4	3/13/2012	pH	6.0	SU
2011-2012	DP-1	3/13/2012	Total Suspended Solids	540	mg/L
2011-2012	DP-3	3/13/2012	Total Suspended Solids	140	mg/L
2011-2012	DP-4	3/13/2012	Total Suspended Solids	180	mg/L
2011-2012	DP-1	3/13/2012	Zinc Total	0.61	mg/L
2011-2012	DP-2	3/13/2012	Zinc Total	0.22	mg/L
2011-2012	DP-3	3/13/2012	Zinc Total	0.4	mg/L
2011-2012	DP-4	3/13/2012	Zinc Total	0.43	mg/L
2012-2013	DP-1	11/28/2012	Chemical Oxygen Demand	1100	mg/L
2012-2013	DP-5	11/28/2012	Chemical Oxygen Demand	140	mg/L
2012-2013	DP-6	11/28/2012	Chemical Oxygen Demand	5300	mg/L
2012-2013	DP-7	11/28/2012	Chemical Oxygen Demand	130	mg/L
2012-2013	DP-1	11/28/2012	Copper Total	0.053	mg/L
2012-2013	DP-2	11/28/2012	Copper Total	0.04	mg/L
2012-2013	DP-3	11/28/2012	Copper Total	0.02	mg/L
2012-2013	DP-5	11/28/2012	Copper Total	0.022	mg/L
2012-2013	DP-6	11/28/2012	Copper Total	0.13	mg/L
2012-2013	DP-7	11/28/2012	Copper Total	0.041	mg/L
2012-2013	DP-9	11/28/2012	Copper Total	0.017	mg/L
2012-2013	DP-1	11/28/2012	Oil and Grease	35	mg/L
2012-2013	DP-6	11/28/2012	Oil and Grease	234	mg/L
2012-2013	DP-7	11/28/2012	Oil and Grease	15.3	mg/L
2012-2013	DP-1	11/28/2012	pH	4.9	SU
2012-2013	DP-2	11/28/2012	pH	5.8	SU
2012-2013	DP-3	11/28/2012	pH	6.2	SU
2012-2013	DP-5	11/28/2012	pH	5.8	SU
2012-2013	DP-6	11/28/2012	pH	5.9	SU
2012-2013	DP-7	11/28/2012	pH	6.4	SU
2012-2013	DP-9	11/28/2012	pH	6.1	SU
2012-2013	DP-1	11/28/2012	Total Suspended Solids	350	mg/L
2012-2013	DP-2	11/28/2012	Total Suspended Solids	1280	mg/L
2012-2013	DP-5	11/28/2012	Total Suspended Solids	310	mg/L
2012-2013	DP-6	11/28/2012	Total Suspended Solids	1040	mg/L
2012-2013	DP-7	11/28/2012	Total Suspended Solids	140	mg/L
2012-2013	DP-1	11/28/2012	Zinc Total	0.64	mg/L
2012-2013	DP-2	11/28/2012	Zinc Total	0.36	mg/L
2012-2013	DP-3	11/28/2012	Zinc Total	0.24	mg/L
2012-2013	DP-5	11/28/2012	Zinc Total	0.35	mg/L
2012-2013	DP-6	11/28/2012	Zinc Total	1.9	mg/L
2012-2013	DP-7	11/28/2012	Zinc Total	0.57	mg/L
2012-2013	DP-9	11/28/2012	Zinc Total	0.22	mg/L
2013-2014	DP-1A	11/19/2013	Chemical Oxygen Demand	920	mg/L
2013-2014	DP-2A	11/19/2013	Chemical Oxygen Demand	790	mg/L
2013-2014	DP-3A	11/19/2013	Chemical Oxygen Demand	3100	mg/L
2013-2014	DP-4A	11/19/2013	Chemical Oxygen Demand	840	mg/L
2013-2014	DP-5	11/19/2013	Chemical Oxygen Demand	530	mg/L

2013-2014	DP-6	11/19/2013	Chemical Oxygen Demand	1900	mg/L
2013-2014	DP-7	11/19/2013	Chemical Oxygen Demand	590	mg/L
2013-2014	DP-8A	11/19/2013	Chemical Oxygen Demand	600	mg/L
2013-2014	DP-9	11/19/2013	Chemical Oxygen Demand	360	mg/L
2013-2014	DP-1A	11/19/2013	Copper Total	0.018	mg/L
2013-2014	DP-2A	11/19/2013	Copper Total	0.14	mg/L
2013-2014	DP-3A	11/19/2013	Copper Total	0.17	mg/L
2013-2014	DP-4A	11/19/2013	Copper Total	0.053	mg/L
2013-2014	DP-5	11/19/2013	Copper Total	0.1	mg/L
2013-2014	DP-6	11/19/2013	Copper Total	0.19	mg/L
2013-2014	DP-7	11/19/2013	Copper Total	0.16	mg/L
2013-2014	DP-8A	11/19/2013	Copper Total	0.069	mg/L
2013-2014	DP-9	11/19/2013	Copper Total	0.1	mg/L
2013-2014	DP-1A	11/19/2013	Oil and Grease	23.5	mg/L
2013-2014	DP-2A	11/19/2013	Oil and Grease	23.2	mg/L
2013-2014	DP-3A	11/19/2013	Oil and Grease	81.5	mg/L
2013-2014	DP-6	11/19/2013	Oil and Grease	48.1	mg/L
2013-2014	DP-5	11/19/2013	pH	6.3	SU
2013-2014	DP-1A	11/19/2013	Total Suspended Solids	250	mg/L
2013-2014	DP-2A	11/19/2013	Total Suspended Solids	500	mg/L
2013-2014	DP-3A	11/19/2013	Total Suspended Solids	740	mg/L
2013-2014	DP-4A	11/19/2013	Total Suspended Solids	230	mg/L
2013-2014	DP-6	11/19/2013	Total Suspended Solids	230	mg/L
2013-2014	DP-7	11/19/2013	Total Suspended Solids	110	mg/L
2013-2014	DP-8A	11/19/2013	Total Suspended Solids	140	mg/L
2013-2014	DP-1A	11/19/2013	Zinc Total	0.71	mg/L
2013-2014	DP-2A	11/19/2013	Zinc Total	0.88	mg/L
2013-2014	DP-3A	11/19/2013	Zinc Total	1.5	mg/L
2013-2014	DP-4A	11/19/2013	Zinc Total	0.41	mg/L
2013-2014	DP-5	11/19/2013	Zinc Total	1.7	mg/L
2013-2014	DP-6	11/19/2013	Zinc Total	1.6	mg/L
2013-2014	DP-7	11/19/2013	Zinc Total	1.3	mg/L
2013-2014	DP-8A	11/19/2013	Zinc Total	0.89	mg/L
2013-2014	DP-9	11/19/2013	Zinc Total	0.91	mg/L
2013-2014	DP-1A	2/26/2014	Aluminum Total	9.7	mg/L
2013-2014	DP-2A	2/26/2014	Aluminum Total	6.2	mg/L
2013-2014	DP-3A	2/26/2014	Aluminum Total	0.76	mg/L
2013-2014	DP-4A	2/26/2014	Aluminum Total	7.3	mg/L
2013-2014	DP-5	2/26/2014	Aluminum Total	8.6	mg/L
2013-2014	DP-6	2/26/2014	Aluminum Total	7	mg/L
2013-2014	DP-7	2/26/2014	Aluminum Total	4.8	mg/L
2013-2014	DP-8A	2/26/2014	Aluminum Total	7.4	mg/L
2013-2014	DP-9	2/26/2014	Aluminum Total	4.9	mg/L
2013-2014	DP-1A	2/26/2014	Chemical Oxygen Demand	9200	mg/L
2013-2014	DP-2A	2/26/2014	Chemical Oxygen Demand	310	mg/L
2013-2014	DP-3A	2/26/2014	Chemical Oxygen Demand	320	mg/L
2013-2014	DP-4A	2/26/2014	Chemical Oxygen Demand	1400	mg/L

2013-2014	DP-5	2/26/2014	Chemical Oxygen Demand	2200	mg/L
2013-2014	DP-6	2/26/2014	Chemical Oxygen Demand	850	mg/L
2013-2014	DP-7	2/26/2014	Chemical Oxygen Demand	870	mg/L
2013-2014	DP-8A	2/26/2014	Chemical Oxygen Demand	550	mg/L
2013-2014	DP-9	2/26/2014	Chemical Oxygen Demand	330	mg/L
2013-2014	DP-1A	2/26/2014	Copper Total	0.19	mg/L
2013-2014	DP-2A	2/26/2014	Copper Total	0.072	mg/L
2013-2014	DP-3A	2/26/2014	Copper Total	0.02	mg/L
2013-2014	DP-4A	2/26/2014	Copper Total	0.12	mg/L
2013-2014	DP-5	2/26/2014	Copper Total	0.19	mg/L
2013-2014	DP-6	2/26/2014	Copper Total	0.17	mg/L
2013-2014	DP-7	2/26/2014	Copper Total	0.15	mg/L
2013-2014	DP-8A	2/26/2014	Copper Total	0.15	mg/L
2013-2014	DP-9	2/26/2014	Copper Total	0.047	mg/L
2013-2014	DP-1A	2/26/2014	Iron Total	27	mg/L
2013-2014	DP-2A	2/26/2014	Iron Total	9.4	mg/L
2013-2014	DP-3A	2/26/2014	Iron Total	3.4	mg/L
2013-2014	DP-4A	2/26/2014	Iron Total	14	mg/L
2013-2014	DP-5	2/26/2014	Iron Total	22	mg/L
2013-2014	DP-6	2/26/2014	Iron Total	15	mg/L
2013-2014	DP-7	2/26/2014	Iron Total	9.2	mg/L
2013-2014	DP-8A	2/26/2014	Iron Total	17	mg/L
2013-2014	DP-9	2/26/2014	Iron Total	8.9	mg/L
2013-2014	DP-1A	2/26/2014	Lead Total	0.23	mg/L
2013-2014	DP-4A	2/26/2014	Lead Total	0.21	mg/L
2013-2014	DP-1A	2/26/2014	Oil and Grease	20.5	mg/L
2013-2014	DP-4A	2/26/2014	Oil and Grease	31.4	mg/L
2013-2014	DP-5	2/26/2014	Oil and Grease	96.4	mg/L
2013-2014	DP-6	2/26/2014	Oil and Grease	26.1	mg/L
2013-2014	DP-7	2/26/2014	Oil and Grease	17.7	mg/L
2013-2014	DP-8A	2/26/2014	Oil and Grease	32.3	mg/L
2013-2014	DP-1A	2/26/2014	pH	4.2	SU
2013-2014	DP-3A	2/26/2014	pH	8.7	SU
2013-2014	DP-1A	2/26/2014	Total Suspended Solids	600	mg/L
2013-2014	DP-2A	2/26/2014	Total Suspended Solids	360	mg/L
2013-2014	DP-3A	2/26/2014	Total Suspended Solids	220	mg/L
2013-2014	DP-4A	2/26/2014	Total Suspended Solids	320	mg/L
2013-2014	DP-5	2/26/2014	Total Suspended Solids	720	mg/L
2013-2014	DP-6	2/26/2014	Total Suspended Solids	490	mg/L
2013-2014	DP-7	2/26/2014	Total Suspended Solids	370	mg/L
2013-2014	DP-8A	2/26/2014	Total Suspended Solids	800	mg/L
2013-2014	DP-9	2/26/2014	Total Suspended Solids	180	mg/L
2013-2014	DP-1A	2/26/2014	Zinc Total	0.6	mg/L
2013-2014	DP-3A	2/26/2014	Zinc Total	0.19	mg/L
2013-2014	DP-4A	2/26/2014	Zinc Total	1.1	mg/L
2013-2014	DP-5	2/26/2014	Zinc Total	1.6	mg/L
2013-2014	DP-6	2/26/2014	Zinc Total	1.6	mg/L

2013-2014	DP-7	2/26/2014	Zinc Total	1.4	mg/L
2013-2014	DP-8A	2/26/2014	Zinc Total	1.2	mg/L
2013-2014	DP-9	2/26/2014	Zinc Total	0.85	mg/L
2014-2015	DP-1A	10/31/2014	Aluminum Total	6.6	mg/L
2014-2015	DP-2A	10/31/2014	Aluminum Total	17	mg/L
2014-2015	DP-3A	10/31/2014	Aluminum Total	28	mg/L
2014-2015	DP-5	10/31/2014	Aluminum Total	6.6	mg/L
2014-2015	DP-6	10/31/2014	Aluminum Total	3.9	mg/L
2014-2015	DP-7	10/31/2014	Aluminum Total	2.9	mg/L
2014-2015	DP-8A	10/31/2014	Aluminum Total	3.9	mg/L
2014-2015	DP-9	10/31/2014	Aluminum Total	5.4	mg/L
2014-2015	DP-1A	10/31/2014	Chemical Oxygen Demand	3900	mg/L
2014-2015	DP-2A	10/31/2014	Chemical Oxygen Demand	700	mg/L
2014-2015	DP-3A	10/31/2014	Chemical Oxygen Demand	2400	mg/L
2014-2015	DP-5	10/31/2014	Chemical Oxygen Demand	3200	mg/L
2014-2015	DP-6	10/31/2014	Chemical Oxygen Demand	820	mg/L
2014-2015	DP-7	10/31/2014	Chemical Oxygen Demand	210	mg/L
2014-2015	DP-8A	10/31/2014	Chemical Oxygen Demand	240	mg/L
2014-2015	DP-9	10/31/2014	Chemical Oxygen Demand	200	mg/L
2014-2015	DP-1A	10/31/2014	Iron Total	11	mg/L
2014-2015	DP-2A	10/31/2014	Iron Total	23	mg/L
2014-2015	DP-3A	10/31/2014	Iron Total	40	mg/L
2014-2015	DP-5	10/31/2014	Iron Total	23	mg/L
2014-2015	DP-6	10/31/2014	Iron Total	13	mg/L
2014-2015	DP-7	10/31/2014	Iron Total	5.5	mg/L
2014-2015	DP-8A	10/31/2014	Iron Total	8.7	mg/L
2014-2015	DP-9	10/31/2014	Iron Total	10	mg/L
2014-2015	DP-1A	10/31/2014	Lead Total	0.39	mg/L
2014-2015	DP-3A	10/31/2014	Lead Total	0.62	mg/L
2014-2015	DP-7	10/31/2014	Lead Total	0.23	mg/L
2014-2015	DP-1A	10/31/2014	Oil and Grease	66.3	mg/L
2014-2015	DP-2A	10/31/2014	Oil and Grease	27.6	mg/L
2014-2015	DP-3A	10/31/2014	Oil and Grease	20.9	mg/L
2014-2015	DP-5	10/31/2014	Oil and Grease	72.8	mg/L
2014-2015	DP-1A	10/31/2014	pH	6.0	SU
2014-2015	DP-1A	10/31/2014	Total Suspended Solids	1480	mg/L
2014-2015	DP-2A	10/31/2014	Total Suspended Solids	660	mg/L
2014-2015	DP-3A	10/31/2014	Total Suspended Solids	1680	mg/L
2014-2015	DP-5	10/31/2014	Total Suspended Solids	320	mg/L
2014-2015	DP-6	10/31/2014	Total Suspended Solids	130	mg/L
2014-2015	DP-7	10/31/2014	Total Suspended Solids	130	mg/L
2014-2015	DP-8A	10/31/2014	Total Suspended Solids	230	mg/L
2014-2015	DP-9	10/31/2014	Total Suspended Solids	240	mg/L
2014-2015	DP-1A	10/31/2014	Zinc Total	1.6	mg/L
2014-2015	DP-1A	10/31/2014	Zinc Total	0.57	mg/L
2014-2015	DP-2A	10/31/2014	Zinc Total	1.0	mg/L
2014-2015	DP-3A	10/31/2014	Zinc Total	2.2	mg/L

2014-2015	DP-5	10/31/2014	Zinc Total	3.2	mg/L
2014-2015	DP-6	10/31/2014	Zinc Total	1.6	mg/L
2014-2015	DP-8A	10/31/2014	Zinc Total	0.7	mg/L
2014-2015	DP-9	10/31/2014	Zinc Total	1.0	mg/L
2014-2015	DP-1A	2/6/2015	Aluminum Total	8.5	mg/L
2014-2015	DP-2A	2/6/2015	Aluminum Total	14	mg/L
2014-2015	DP-3A	2/6/2015	Aluminum Total	40	mg/L
2014-2015	DP-1A	2/6/2015	Chemical Oxygen Demand	6100	mg/L
2014-2015	DP-2A	2/6/2015	Chemical Oxygen Demand	510	mg/L
2014-2015	DP-3A	2/6/2015	Chemical Oxygen Demand	470	mg/L
2014-2015	DP-1A	2/6/2015	Iron Total	43	mg/L
2014-2015	DP-2A	2/6/2015	Iron Total	17	mg/L
2014-2015	DP-3A	2/6/2015	Iron Total	39	mg/L
2014-2015	DP-1A	2/6/2015	Oil and Grease	29.1	mg/L
2014-2015	DP-2A	2/6/2015	Oil and Grease	20.4	mg/L
2014-2015	DP-1A	2/6/2015	pH	6.4	SU
2014-2015	DP-1A	2/6/2015	Total Suspended Solids	760	mg/L
2014-2015	DP-2A	2/6/2015	Total Suspended Solids	390	mg/L
2014-2015	DP-3A	2/6/2015	Total Suspended Solids	520	mg/L
2014-2015	DP-1A	2/6/2015	Zinc Total	0.98	mg/L
2014-2015	DP-2A	2/6/2015	Zinc Total	0.89	mg/L
2014-2015	DP-3A	2/6/2015	Zinc Total	1.2	mg/L

Attachment 3: Alleged Dates of Exceedances by Berkeley City Transfer Station and Recycling Center, November 7, 2010 to November 6, 2015

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center; Berkeley, California station, GHCND:US1CAAL0020* when a stormwater discharge from the Facility is likely to have occurred. http://www.ncdc.noaa.gov/cdo-web/search

2010	2011	2012	2013	2014	2015
11/7	1/1	1/19	1/7	2/2	2/7
11/19	1/2	1/20	1/23	2/5	2/8
11/20	1/13	1/21	2/7	2/6	2/9
11/21	1/29	1/22	2/19	2/7	3/23
11/23	1/30	1/23	3/5	2/8	4/7
11/27	2/14	2/7	3/6	2/9	6/11
12/5	2/15	2/12	3/19	2/26	11/2
12/6	2/16	2/13	3/20	2/28	11/3
12/8	2/17	2/15	3/31	3/5	
12/9	2/18	2/29	4/1	3/26	
12/14	2/19	3/1	4/4	3/27	
12/17	2/24	3/13	6/25	3/29	
12/18	2/25	3/14	9/21	3/31	
12/19	3/2	3/15	11/19	4/1	
12/21	3/6	3/16	11/20	4/4	
12/22	3/13	3/24	12/6	4/25	
12/25	3/14	3/25		9/25	
12/28	3/15	3/27		10/25	
12/29	3/18	3/31		10/31	
	3/19	4/10		11/19	
	3/20	4/11		11/20	
	3/22	4/12		11/22	
	3/23	4/17		11/29	
	3/24	4/26		11/30	
	3/25	10/22		12/2	
	3/26	10/23		12/3	
	4/21	10/31		12/6	
	4/24	11/1		12/11	
	5/14	11/9		12/12	
	5/15	11/16*		12/14	
	5/16	11/17*		12/15	
	5/17	11/18*		12/16	
	5/25	11/28*		12/17	
	5/28	11/30		12/19	
	5/31	12/3			
	6/4	12/5			
	6/28	12/12			
	6/29*	12/17			
	10/3	12/22*			
	10/4	12/23*			
	10/5	12/26*			

* Data reported by Richmond, California station, GHCND:US00047414.

	10/6	12/29*			
	10/10	12/31			
	10/11				
	11/3				
	11/5				
	11/11				
	11/18				
	11/19				
	11/20				
	11/24				